

Osberg v. Foot Locker, Inc., et al., 07-cv-01358 (KBF) (S.D.N.Y.)

Joint Pretrial Order

July 1, 2015

Exhibit 11G

Declaration of Doris Albright

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

in June 2011. I had no idea that this was happening based on what Woolworth told me at the time about the pension plan.

5. Between late 1995 and when I took my pension distribution, I received many communications about the Plan as discussed below, but none told me that my benefit was going to be frozen or even that it might be frozen. Nothing that I read in any of the communications gave me any idea that something like that would happen. Instead, the Plan statements and other communications I received showed me that my benefit would grow as I continued to work for Woolworth after January 1, 1996, and that was my understanding.

First learning about the Plan changes

6. I remember I first learned about the changes to Plan by reading about it in a letter that I received in September 1995 from the Woolworth's CEO Roger Farah and President Dale Hilpert. That letter is the Class's Trial Exhibit PX2. I recall that the tone of the letter was very positive. Based on what I read in the letter, I believed that the changes to the Plan were good for employees and that no cuts in benefits were involved at all.

7. The next document that I remember receiving and reading about the Plan changes was a highlights memo from November 1995. That document is the Class's Trial Exhibit PX4. The message that I took away after reading this memo was that Woolworth was converting my pension from an annual benefit to a cash account. I recall not seeing anything that I needed to worry about, or that would raise concern that something bad was happening to my pension.

8. I remember in January 1996 receiving and reviewing a Plan benefit statement that showed me my new pension account balance. I saved this document in my files and it is the Class's Trial Exhibit PX340. This statement showed me my old annual accrued benefit through December 31, 1995 on the left, along with my new account balance on the right. I understood

this to mean that my new account was my pension benefit and that my old benefit had been turned into cash and deposited in the account. I wouldn't have known how they calculated that conversion, but I trusted the company and assumed that Woolworth had performed the calculation in a standard way as required by the government. Again, I saw nothing negative or suspicious in this statement.

Closing of the Greenville Distribution Center

9. I learned that Woolworth planned to close the Greenville Distribution Center in October 1995, from Jim Ballard, who was my direct supervisor and the general manager at Greenville.

10. I remember working with a Rita Welz from the New York executive office to help schedule and arrange the meetings concerning the closing. These meetings were held over two days on or around February 7, 1996. I personally attended several but not all of the meetings. I also received the same documents regarding the closing as everybody else.

11. Ms. Welz came down to Greenville to speak at the meetings, along with another Human Resources person. I recognize the names Carol Kanowicz and Tom Kiley, but I do not recall that either of them attended these meetings. I later interacted briefly with Marion Derham, but I have never met her in person and she also did not attend these meetings.

12. While I did not attend every meeting, I remember that pension was not a focus at the meetings and there were only some minor discussions about it. Instead, the meetings focused on job placement, resume writing, severance benefits, and continuation of health benefits through COBRA. I do not remember anyone asking any questions regarding the pension plan. I am certain that no one explained that from January 1996 until my last day I would not accrue any

additional pension benefits, or accrue additional pension benefits at a rate slower than before January 1, 1996.

13. Among the several documents that I remember were distributed at or about the same time as the meetings was a printed pension benefit estimate as of June 1, 1996. I remember that this pension benefit estimate was the first time I saw that I could receive a lump sum of approximately \$13,000. This document is part of the Class's Trial Exhibit PX341.

14. When I reviewed this pension estimate, I noticed that the lump sum available to me was larger than my account balance. I thought that the difference represented what Woolworth was required to give me to buyout my account benefit rather than leaving my money in the Plan until age 65.

Further post-meetings communications about the Plan changes

15. Sometime after the meetings, I remember receiving an updated account statement in the mail. My copy of that statement that I retained in my files is the Class's Trial Exhibit PX352. The handwriting that appears at the bottom is mine. I believe that the notes that I wrote – saying “plus interest” and “not assuming we are leaving” – reflect that I was trying to figure out why my printed pension benefit estimate as of June 1, 1996 said that my lump sum was approximately \$13,000, but this Plan statement said I would only receive \$5,000.

16. I remember that shortly after this document was sent out, many co-workers started coming to me with questions about their statements because I was the administrative manager at Greenville and handled personnel issues. Some did not understand why there was such a large difference between the amounts shown on this Plan statement and the estimate we received in February 1996, while others wanted to know why co-workers with similar ages or work histories had different account balances. I recall that the primary concern was that all those different

amounts were the result of some error in calculating the old pension benefit. I remember that some co-workers had worked for other divisions, like Woolco, and they were particularly concerned that their prior service was not included or counted correctly.

17. Because of all the questions, I remember writing an email to Marion Derham dated March 12, 1996. A copy of this email is the Class's Trial Exhibit PX162. I wrote this email because I wanted to be able to reassure my co-workers who were coming to me with questions that there were no errors in their pension calculations. I probably should have been clearer to Ms. Derham that the concern at Greenville was whether service in other divisions or past salary had all been included counted correctly.

The Summary for Greenville Associates and Examples

18. In response to my March 12, 1996 email, Ms. Derham sent me a set of documents called "Summary for Greenville Associates." That document is the Class's Trial Exhibit PX99.

19. Two days after I received the Greenville Summary from Ms. Derham, I sent it out to my co-workers with my own cover letter. A copy of this set of documents that I saved in my files is the Class's Trial Exhibit PX339.

20. I recall that the Summary and attached examples, which Ms. Derham prepared without my assistance or input, did not actually address the main reason why I had contacted her – namely that my co-workers were concerned that all their years of service might not have been included correctly in the calculations.

21. I remember that I called Ms. Derham to ask what additional information I could tell those co-workers and I wrote my cover letter using the information she provided me. In my cover letter, I explained that the Plan statement we received in January 1996 provided years of service and years of vesting service on the left side. My cover letter also told co-workers to

check with Personnel if they thought there were any problems with those numbers. Nobody came to me with any concerns or complaints about their pension benefit or asked me any further questions after I sent out these documents.

22. In addition to distributing the Summary and Examples to my co-workers, I remember carefully reviewing the documents myself. I remember reviewing Example III in particular and recognizing that it was very similar to my own age, service, and salary. I also remember that Examples I and II showed that the large differences were not a mistake. Instead, some employees over age 50 had much larger accounts because Woolworth had purposely calculated their benefit higher using something called an “Enhancement” that I was not eligible for because I was only age 41 at the time.

23. I did not understand everything in these documents, but in reviewing them I noticed the difference between the initial account balance and minimum lump sum. I remember reading that federal law required making certain minimum payments, and I thought that the minimum lump sum was larger than the account balance because of those rules. Specifically, I thought that if a participant took their pension benefit before age 65, federal law or regulations required that it be increased to account for the fact that it would not continue to grow until age 65. I trusted that the company was doing the right thing and following federal regulations.

24. I was shocked when I learned from my attorney, Mr. Gottesdiener, the day before my deposition what had really happened to me: that the \$13,000 lump sum I was shown in 1996 was not a buy-out for my pension account. I was also shocked to learn that the Plan statements I received in January and March 1996 telling me that I would receive approximately \$5,000 if I left on January 1, 1996 were false, and that I had earned no additional benefits between January

1, 1996 and my last day of work. The document Ms. Derham sent me could not possibly have revealed any of that information to me.

After leaving Woolworth

25. Around the time I left Woolworth at the end of June 1996, I remember receiving an Estimated Vested Pension Benefits form along with other pension distribution information. I saved that document in my files and it is the Class's Trial Exhibit PX354.

26. I decided against taking my pension out of the Plan right away, in part because 6% seemed like a good return on my money and I wasn't close to retirement age yet.

27. I also remember in or about July 1997 receiving another letter about my retirement benefits. This letter told me that I would be entitled to a lump sum of approximately \$28,000 on my normal retirement date of October 1, 2019. I remember being happy that my account would eventually grow to \$28,000 by then.

28. After reaching age 55, I began to check into my pension benefit again. About four years ago, I decided to take my pension out of the Plan as a lump sum, primarily because I thought doing so would allow me to provide for my children in the event that something happened to me.

Dated: July 1, 2015


Doris Albright